U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15776123

Date: JUNE 30, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an information systems manager, seeks classification as a member of the professions holding an advanced degree and as an individual of exceptional ability in the sciences, arts, or business. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as an individual of exceptional ability in the sciences, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, regarding substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Director determined that the Petitioner does not qualify for classification as a member of the professions holding an advanced degree, but that he does qualify for classification as an individual of exceptional ability in the sciences. For reasons to be discussed below, we disagree with the latter determination, but first we will address the stated grounds for denial. The issue on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The Petitioner earned a bachelor's degree in accounting from [redacted] University in 2002, and he has worked for various information technology companies since 2004. Since 2006, the Petitioner has worked as a service engineer for [redacted] in Egypt, the United Kingdom, and the United Arab Emirates. As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance of the Proposed Endeavor

We agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.[3]

In his initial statement, the Petitioner provides general information about his occupation, and describes his past employment, but he does not provide specific details about his proposed endeavor. "The first prong, substantial merit and national importance, focuses on the *specific endeavor* that the foreign national proposes to undertake." *Matter of Dhanasar*, 26 I&N Dec. at 889 (emphasis added). The proposed endeavor is not simply a declaration of intent to work in a particular field, occupation, or specialty. Nevertheless, the Petitioner relies on generalities about the occupation as a whole, stating: "It is clear that Information Systems Managers have both intrinsic merit and national importance." There exists no blanket waiver for information systems managers, and the Petitioner cannot qualify for the waiver simply by establishing that he has experience in that occupation. The Petitioner is correct that many different businesses and industries rely on computers, but it does not follow that, as an information systems manager, he will directly affect all, most, or many of those businesses and industries through his work. A broad range of potential employers does not imply that the Petitioner is likely to have a wide-ranging impact.

In a request for evidence (RFE), the Director stated that the Petitioner did not "provide a detailed description of the proposed endeavor." In response, the Petitioner disputed this assertion, stating that his initial submission described his "15 year career in the field . . . in detail." The Petitioner also stated: "in light of his extensive experience in this field, he will continue this endeavor in the United

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[3] While we may not discuss every document submitted, we have reviewed and considered each one.

States." The Petitioner's employment abroad concerned specific projects in England and the Middle East. The assertion that "he will continue this endeavor in the United States" says little about what the Petitioner plans to do, except that it will involve information systems management (which is an occupation, not a specific proposed endeavor).

Most of the Petitioner's employment abroad was with [redacted] but he did not show that [redacted] seeks to employ him in the United States. His response to the RFE includes an email message from [redacted] dated June 10, 2020, indicating that the Petitioner had inquired about opportunities to work for [redacted] in the United States, but the company's human resources department "is advising to not pursue further," while encouraging the Petitioner "to pursue this same type of role operating out of the [Middle East]."

On July 2, 2020, [redacted] offered the Petitioner a position as "Enterprise Cloud Solutions Architect" beginning in October 2020. The letter specified: "We cannot assist you with filing for residency and a labor certification because of the length of time required." The Petitioner accepted the job offer, but the record does not show that the Petitioner subsequently began working there or entered the United States in some other capacity.

The job offer does not specify the duties of the position, but even if it did, it would not establish the nature of the proposed endeavor at the time of filing. The record does not indicate that the Petitioner was contemplating employment with [redacted] when he filed the petition in November 2019. The above correspondence shows that the Petitioner was contemplating employment with [redacted] as late as June 2020, securing the job offer from [redacted] only after [redacted] declined to hire him in the United States.

In the denial notice, the Director stated: "It is conjecture and speculation to claim that the beneficiary will contribute to the American economy. At best, the field of the endeavor and the role as it has been described, appears to be localized to the petitioner." The Petitioner disputes this conclusion, asserting that he "pointed out specific examples . . . as to how he has contributed to his field with specific projects and accomplishments that have made a positive impact in his field, and also how his accomplishments have affected both organizations and his field globally."

The Petitioner has not articulated any specific information regarding his intended future work. As explained above, establishing the proposed endeavor is not simply a matter of describing past employment and stating the intention to continue performing similar work. Some occupations may be more conducive to the waiver than others, but the *Dhanasar* framework revolves around the specific proposed endeavor, rather than creating blanket waivers for entire occupations, specialties, or fields. By statute, the job offer requirement ordinarily applies to foreign nationals (including information systems managers) with exceptional ability, defined as "a degree of expertise significantly above that ordinarily encountered" in a given field.[4] Therefore, the Petitioner cannot qualify for the waiver merely by asserting that he possesses significant expertise in his occupation, but that appears to be the core of his claim in this proceeding.

[4] 8 C.F.R. § 204.5(k)(2).

Because the Petitioner has cited his past work as the sole benchmark for the national importance of his work, it is significant that the evidence of record does not establish how that work benefited others beside his employers and their clients. Recommendation letters submitted with the initial filing indicated that his work was beneficial to [redacted] and its clients, but successful completion of assignments does not show that his work had, and will continue to have, national importance. In a congratulatory email reproduced in the record, a member of [redacted]'s sales staff told the Petitioner, "if you weren't there, we would not have closed this deal." The email describes how a rival company was "holding their breath . . . and hoping for any kind of failure," but the Petitioner's dedication "left them no excuse to talk negatively" about [redacted]'s database platform. This project may have benefited the client, and certainly benefited [redacted] but the Petitioner has not shown that it was of national importance for [redacted] to close this particular deal instead of its competitor. (Certainly the competitor, a major information technology company based in the United States, derived no direct benefit from the transaction.) Likewise, the Petitioner does not establish that this client's use of [redacted]'s product is significant at a national level, and even then, there is no indication that the Petitioner developed the product rather than participated in installing and servicing an existing product for this particular client.

The Petitioner has not sufficiently described the proposed endeavor, and has not established its national importance. In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, the record does not show that the Petitioner's proposed endeavor (to the extent described) stands to sufficiently extend beyond his employer(s) and their projects to impact the industry more broadly at a level commensurate with national importance. Nor has he shown that the particular work he proposes to undertake offers original innovations that contribute to advancements in the field, rather than just affecting projects involving his company, or otherwise has broader implications for his field. For all these reasons, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

B. Balancing Factors to Determine Waiver's Benefit to the United States

As explained below, we agree with the Director's determination that the Petitioner did not show, on balance, that the Petitioner's potential benefit to the United States outweighs the national interest inherent in the labor certification requirement.

The Petitioner's initial statement includes this passage:

> On balance, it would benefit the United States to have someone with [the Petitioner's] extensive experience in the field of information management engineering to advance the goals of improved efficiencies and performance through the use of technology. . . . A highly skilled information technology engineer such as [the Petitioner] would help American businesses become more competitive in the global economy because he is able to utilize his skills at managing computer and information systems to increase organizational efficiencies and improve a company's bottom line.

This statement relies on generalities rather than any specific information about how the Petitioner, in particular, would benefit the United States. He states that "every industry . . . relies on computer systems," and that he "will be a tremendous asset to any U.S. company." But the Petitioner, if granted

the waiver, would not work for "every industry"; he would work for one particular company, and he has not shown how that work would produce benefits beyond that unnamed, hypothetical employer.

The Petitioner cites the job offer letter from [redacted] to show that there is urgency to the petition. In that letter, [redacted] stated: "We cannot assist you with filing for residency and a labor certification because of the length of time required. We have an immediate need that has to be filled." This letter, however, does not meet the *Dhanasar* standard of showing that the national interest in the Petitioner's contributions is sufficiently urgent to warrant forgoing the labor certification process; the Petitioner does not explain why it is in the national interest (as opposed to one employer's interest) to fill the position immediately.

On appeal, the Petitioner states that the communications from [redacted] and [redacted] "proved that it would be impractical for him to obtain a labor certification." *Dhanasar* discusses the impracticality issue in a footnote:

> For example, the labor certification process may prevent a petitioning employer from hiring a foreign national with unique knowledge or skills that are not easily articulated in a labor certification. . . . Likewise, because of the nature of the proposed endeavor, it may be impractical for an entrepreneur or self-employed inventor, when advancing an endeavor on his or her own, to secure a job offer from a U.S. employer.

Id. at 890 n.10. The Petitioner has not established that labor certification is inherently impractical for the type of position he seeks, in the ways discussed above. Rather, two prospective employers declined to pursue labor certification in this particular instance. To grant the national interest waiver because a given employer *could* seek a labor certification, but chooses not to do so, would be to effectively downgrade labor certification from a statutory requirement to an option that employers and prospective employees may freely disregard.

For the above reasons, the Petitioner has not satisfied the third prong of the *Dhanasar* framework. Because the Petitioner has not satisfied all three prongs of the *Dhanasar* framework, the petition cannot be approved.

C. Exceptional Ability

Beyond the above grounds, we disagree with the Director's determination that the Petitioner has established eligibility for the underlying immigrant classification as an individual of exceptional ability. Detailed discussion of this issue cannot change the outcome of this appeal, and we may therefore reserve such discussion.[5]

Nevertheless, we briefly note that the regulation at 8 C.F.R. § 204.5(k)(3)(ii) requires petitioners to satisfy at least three of six listed criteria to establish exceptional ability. Here, the Petitioner claims to

[5] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

satisfy four of them. The Petitioner's evidence is questionable under at least two of those claimed criteria.

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(h)(3)(ii)(A)

[redacted] University awarded the Petitioner a degree evaluated as being equivalent to a "Bachelor of Business Administration in Accounting." The Petitioner has not shown that this degree relates to his area of claimed exceptional ability. Out of 40 course titles listed, only two, "Computers in Accounting" and "Accounting Information Systems," have any demonstrable relation to his intended occupation in information systems management.

The Petitioner also holds certificates issued by [redacted] Corporation and by Egypt's Ministry of Communication and Information, which are more closely related to his intended occupation, but the Petitioner has not established that [redacted] or the Ministry is "a college, university, school, or other institution of learning" as the regulation requires. The certificates appear to reflect short-term, product-specific training, rather than anything comparable to an academic degree. Some certificates show the term [redacted] University," but the record does not establish that this term refers to an actual institution of learning rather than an internal training program.

> *Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.* 8 C.F.R. § 204.5(h)(3)(ii)(F)

The Petitioner documents no formal recognition for achievements or significant contributions to the industry or field. He submits letters of recommendation from employers and a client, and evidence of internal recognition from [redacted] but these materials relate to the Petitioner's work on specific projects that benefited his employer and its clients. They do not establish achievements and significant contributions *to the industry or field.*

If the Petitioner had otherwise established eligibility for the benefit sought, then the above issues would warrant further discussion. But, because the Petitioner has not shown that he qualifies for the national interest waiver, we need not delve further into the issue of exceptional ability.

III. CONCLUSION

Because the Petitioner has not met the required first and third prongs of the *Dhanasar* analytical framework, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.